SURETYSHIP—COUNTY TREASURER—TRUST DEED.—One Taylor was a county treasurer. He gave a deed of trust to secure the sureties on his bond. Plaintiffs held county warrants payable out of a certain fund in his hands. He defaulted and plaintiffs bring action against him and his sureties to recover the amount of the warrants held by them. *Held*, that plaintiffs could recover and that the deed of trust inured to their benefit. *Jennings et al* v. *Taylor et al* (1903), — Va. —,45 S. E. Rep. 913.

The doctrine that securities given by a principal to indemnify his surety inure to the benefit of a creditor is not recognized in England. At least this is so where the securities are given by the principal direct to the surety. *Re Walker etc.* v. *Clayton*, 66 L. T. R. 315. But the American holdings are the other way. *Vail* v. *Foster et al*, 4 N. Y. 312, *Curtis* v. *Tyler*, 9 Paige 432, *Barton* v. *Martin*, 54 Mo. App. 134. The present case goes even farther because here the court holds that the deed inures to the benefit of the county's creditors or in other words to the creditors of a creditor.

SURETYSHIP—JOINT AND SEVERAL NOTE—WORD "SURETY" AFTER SIGNATURE.—Defendants executed a promissory note to plaintiff. In this action brought to recover on the note, it is urged in defense that after the name of one of the defendants was written the word "surety" which had been erased by the plaintiff and that therefore, the note became void. *Held*, that the plaintiff could recover. *Galloway* v. *Bartholomew* (1903), — Ore. —, 74 Pac. Rep. 467.

"The fact, if it is a fact," says the court, "that the word surety was written after the name of one of the makers would not affect their liability as joint and several makers so far as the payee is concerned. It would only be notice that as between themselves one was principal and the other surety." This doctrine is unquestionably sustained by the great weight of authority. *Nat. Bank* v. *Wyatt*, 87 Cal. 616, 25 Pac. Rep. 918, *Bond* v. *Storrs*, 13 Conn. 412, *Inkster* v. *First Nat. Bank*, 30 Mich. 143, *Hoyt* v. *Mead*, 13 Hun. (N. Y.) 327, *Ballard* v. *Burton*, 64 Vt. 387, 24 Atl. Rep. 769, 16 L. R. A. 664, *Dart* v. *Sherwood*, 7 Wis. 523, 76 Am. Dec. 228.

TELEGRAM—DELAY IN DELIVERY—DAMAGES—MENTAL SUFFERING.—The following message was addressed to the plaintiffs from St. Louis, Mo., "Your daughter, Sarah, died this morning at City Hospital, shall I send remains to you, answer, letter on road to you." The message was prepaid, but was so unreasonably delayed, that the plaintiff, not knowing the condition of the body, ordered the remains to be interred at St. Louis. Plaintiff might have had the remains shipped to Nashville or might have gone to St. Louis had the message been promptly delivered. Because of the negligence of the defendant company plaintiff was prevented from being present at the funeral of her daughter and brought action for her "mental anguish, grief and disappointment." The declaration contained two counts—one a common law count for negligence in delivery—the other founded upon a statute of Tennessee, *Held*, an action at common law cannot be maintained to recover for mental suffering unaccompanied by any pecuniary loss or physical injury; and whether a statutory right to recover "some damages" for the breach of a statutory duty, affords a basis to also recover for injured feelings, is a question of general jurisprudence, with regard to which the federal court is not bound by the opinion of the state court. *W. U. Tel. Co.* v. *Sklar, et ux.* (1903), — C. C. A. 6th Cir. — 126 Fed. Rep. 295.

No damages can be recovered at common law for mental suffering unconnected with some form of physical injury. COOLEY ON TORTS 271; *Connell* v. *Tel. Co.*, 116 Mo. 34, 22 S. W. Rep. 345, 20 L. R. A. 172, 38 Am. St. Rep.

575; *Tel.Co.* v. *Rogers*, 68 Miss. 748, 9 South Rep. 823, 13 L. R. A. 859, 24 Am. St. Rep. 300. Actions for seduction and breach of promise rest upon grounds peculiar to themselves and damages are held to include also mental suffering. *Vanderpool* v. *Richardson*, 52 Mich. 336; 17 N. W. Rep. 936; *Sherman* v. *Rawson*, 102 Mass. 395, 399. The courts, however, are in irreconcilable conflict upon the question involved in this decision. Many respectable courts have allowed the recovery of damages for mental pain and anguish under similar circumstances. In two instances at least, notably, Texas and Indiana, the same court has held, at different times, both doctrines, at one time denying a recovery, at another allowing a recovery for mental suffering alone. See *Reese* v. *Tel. Co.*, 123 Ind. 294, 24 N. E. Rep. 163, overruled by *Tel. Co.* v *Ferguson*, 157 Ind. 64, 60 N. E. Rep. 674, 54 L. R. A. 846. The principal case is supported by the weight of authority. See *Chase* v *Tel. Co.*, 44 Fed. Rep. 554, 10 L. R. A. 464; *Kester* v. *Tel. Co.*, 55 Fed. Rep. 603; *Morton* v. *Tel. Co.*, 53 Ohio St. 431, 32 L. R. A. 735. The court holds, that the federal courts are bound by the construction given by a state court to a state statute, but in so far as the judgment of a state court proceeds upon questions of general law, a federal court is under no obligation to follow a state decision which does not meet with its approval. *Byrne* v. *Kansas City Ry. Co.*, 61 Fed. Rep. 605, 9 C. C. A. 666, 676, 24 L. R. A. 693, and the right to recover "some damages" upon some other ground, is held, not to carry with it the right to add to such nominal damages, damages for mental pain, grief or anguish. After reviewing the decisions of the Tennessee courts, the question involved is held one of general jurisprudence and as such, the declaration is held not to state a cause of action. See following note.

TELEGRAM—DELAY—MENTAL ANGUISH.—Defendant company failed to deliver to the plaintiff a telegram advising him of the death of his father. Receiving information from other sources, plaintiff made the journey to his father's home, arriving, however, too late to be present at the funeral. Thereupon he brought action for the alleged mental anguish and suffering sustained, and also for special damages for the expenses of the useless trip incurred by him, which would have been avoided had the message been promptly delivered, *Held*, damages for mental suffering alone cannot be recovered, either under the statute of Virginia or independent of such statute: that the expenses incurred in making the useless journey, which the prompt delivery of the telegram would have prevented, were too "uncertain and problematical" to form the basis of a law suit. *Alexander* v. *W.U.Tel. Co.* (1903), — C. C. E. D. Va.—126 Fed. Rep. 445.

The Virginia courts in construing the statutes of that state relating to this subject, decided that a plaintiff must show (1) the negligent failure of the defendant's agent in delivering the message and (2) *special damages* resulting to the plaintiff therefrom, which must be alleged and proved, before a jury can add an additional sum for grief and anguish of the plaintiff. Further that the statutes were merely declaratory of the pre-existing law and gave no action for mere mental anguish. *Connelly* v. *Tel. Co.*, 100 Va. 51, 40 S. E. Rep 618, 56 L. R. A. 663. The principal case follows the doctrine of the common law and the weight of authority, and denies a recovery as to mental suffering, resulting from delay in the delivery of a telegram. See note to *R. R.* v. *Caulfield*, 11 C. C. A. (U. S.) 571; also following note.

TELEGRAM—NEGLIGENCE—MENTAL SUFFERING—DAMAGES. — Immediately upon the death of her husband, plaintiff, then in Iowa, prepared to take his body to the home of his parents in Illinois. To insure their meeting her